

ESTTA Tracking number: **ESTTA443051**

Filing date: **11/23/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Hybrid Promotions, LLC		
Entity	Limited Liability Company	Citizenship	California
Address	10711 Walker Street Cypress, CA 90630 UNITED STATES		

Attorney information	Christa D. Perez Friedman Stroffe & Gerard, P.C. 19800 MacArthur Blvd. Suite 1100 Irvine, CA 92612 UNITED STATES cperez@fsglawyers.com Phone:949 265 1116
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Registration Subject to Cancellation

Registration No	3723220	Registration date	12/08/2009
Registrant	Fashion Exchange, LLC Suite 2600 1407 Broadway New York, NY 10018 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2006/03/01 First Use In Commerce: 2006/03/01


All goods and services in the class are cancelled, namely: Baby tops; Bathing suits; Body suits; Clothing, namely, wrap-arounds; Coats; Coats of denim; Crop tops; Denim jackets; Denims; Dress suits; Dresses; Dry suits; Fabric belts; Fabric sold as an integral component of finished clothing items, namely, men's, ladies' and childrens' outerwear in the nature of parkas, puffer jackets, coats, raincoats, wind resistant jackets, sweaters and footwear; Footwear; Gym suits; Halter tops; Hoods; Infant and toddler one piece clothing; Jackets; Jerseys; Jogging suits; Judo suits; Karate suits; Leather belts; Mantles; Mufflers; Muscle tops; One-piece play suits; Pants; Parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; Play suits; Rain suits; Rugby tops; Shifts; Shirts; Shirts for suits; Short sets; Shoulder wraps; Ski suits; Ski suits for competition; Skirt suits; Slacks; Snow boarding suits; Snow suits; Suit coats; Suits; Swaddling clothes; Sweat suits; Tank tops; Ties; Tops; Track suits; Tube tops; Vests; Wraps

Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application	85245387	Application Date	02/17/2011
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HYBRID		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1999/02/00 First Use In Commerce: 1999/02/00 knit tops, namely, tank tops, t-shirts, sweatshirts, hooded sweatshirts		

Attachments	85245387#TMSN.jpeg (1 page)(bytes) Petition to Cancel.pdf (4 pages)(102726 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/christa d perez/
Name	Christa D. Perez
Date	11/23/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Hybrid Promotions, LLC,)	
)	
Petitioner)	
)	
v.)	Cancellation No.
)	
Fashion Exchange, LLC,)	
)	
Respondent)	
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PETITION FOR CANCELLATION

Petitioner Hybrid Promotions, LLC, a California limited liability company ("Petitioner"), with its principal place of business at 10711 Walker Street, Cypress, CA 90630, believes that it is being and will continue to be damaged by U.S. Trademark Registration 3723220 owned by respondent Fashion Exchange, LLC, a New York limited liability company ("Respondent"), and hereby petitions to cancel said registration pursuant to 15 U.S.C. §1064 and 37 C.F.R. §2.111.

As grounds therefor, Petitioner alleges that:

1. Petitioner's mark HYBRID is the subject of trademark Application Serial Number 85245387, filed by Petitioner.
2. Petitioner has been manufacturing and distributing apparel under the HYBRID mark since at least as early as 1999.
3. Petitioner has been using HYBRID's mark in interstate commerce since at least as early as 1999.
4. Through the years Petitioner has expended substantial amounts of money, time and effort in developing, advertising, and promoting the HYBRID mark and has received substantial national publicity with respect to its apparel items.
5. The HYBRID mark is a strong trademark, and has developed goodwill and a good reputation exclusive to Petitioner.

6. Petitioner has prominently and continuously used the HYBRID mark in commerce on its apparel products. The HYBRID mark is prominently affixed to its products in at least two locations: (a) on the sewn in or screened in label on the inside of the back collar of its shirts, and (b) on the hang tag attached to its products.

7. Although Petitioner has never authorized Respondent to use its HYBRID mark in any manner, Respondent has been using Registration No. 3723220 for the mark HYBRID & COMPANY in connection with goods in Class 25 ("Respondent's Mark").

8. Respondent filed its application on June 5, 2008 and alleged a date of first use of Respondent's Mark of March 5, 2006. Both the date of first use and the filing date of Respondent's mark are well after Petitioner's first use of the HYBRID mark. Accordingly, Respondent has no use of its mark, either actual or constructive, prior to Petitioner's use of the HYBRID mark.

9. Upon information and belief, Respondent is using Respondent's Mark to sell apparel products – the same goods sold by petitioner under its HYBRID mark – to the same or similar consumer as Petitioner, using nearly the same trademark as that owned and used by petitioner. Thus, consumers are being misled into believing that the goods sold under Respondent's Mark are Petitioner's products, when, in fact, they are not.

10. Respondent's Mark, when applied to the goods recited in Respondent's registration, is so similar to the HYBRID Mark used with Petitioner's goods, as to create a likelihood of confusion, or to cause mistake, or to deceive, within the meaning of Section 2(d) of the Lanham Act, all to Petitioner's irreparable damage.

11. Respondent's Mark is confusingly and deceptively similar to petitioner's HYBRID mark, and Respondent is therefore not entitled to adopt, use or seek registration of Respondent's Mark in connection with the goods identified in Respondent's registration.

12. The goods identified in Respondent's registration are identical or closely related to the goods sold by Petitioner under its HYBRID mark, are used

in similar channels of trade and are likely to be encountered by those familiar with goods and services associated with Petitioner's HYBRID mark.

13. Respondent's Mark and Petitioner's HYBRID mark are nearly identical in appearance and are identical phonetically, in part, so that contemporaneous use of the respective marks will create a likelihood of confusion, mistake or deception among the trade and consumers.

14. Respondent's Mark is confusingly and deceptively similar to Petitioner's HYBRID mark, and may falsely imply or suggest an affiliation or other connection between Respondent and Petitioner which does not exist. The consuming public, upon seeing Respondent's Mark in association with Respondent's goods, is likely to believe that the goods are made, endorsed or sponsored by Petitioner, or that there is a trade connection or affiliation between Respondent and its goods, on the one hand, and Petitioner's goods on the other hand, when in fact, no such affiliation or sponsorship exists.

15. Petitioner is the prior user of the HYBRID mark for apparel items in Class 25. Petitioner and its business interests will be damaged if Respondent is permitted to maintain its registration and virtually identical mark. To be sure, any faults or defects in Respondent's goods would reflect adversely upon and seriously injure the valuable reputation and good will of Petitioner.

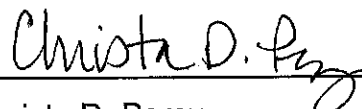
WHEREFORE, Petitioner believes that it is being and will continue to be damaged by Respondent's Mark and respectfully petitions that the subject registration be cancelled in its entirety.

Respectfully submitted,

FRIEDMAN STROFFE & GERARD, P.C.

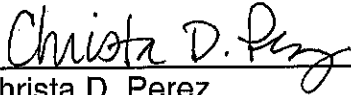
Dated: November 23, 2011

By: _____


Christa D. Perez
Attorneys for Petitioner

Certificate of Transmittal


I, Christa D. Perez, hereby certify that a true copy of the foregoing Petition for Cancellation is being filed electronically with the TTAB via ESTTA on this day, November 23, 2011.


Christa D. Perez
Attorney for Petitioner

Certificate of Service

I, Christa D. Perez, hereby certify that a true and correct copy of the foregoing Notice of Oppositions was served on Respondent on November 23, 2011 via first class mail to:

Fashion Exchange, LLC
Suite 2600
1407 Broadway
New York, NY 10018


Christa D. Perez
Attorney for Petitioner